INDEX.

ALIEN CHINESE.

1. Under the statutes referred to in the opinion of the court, jurisdiction is given to the collector of the port at which an alien Chinese seeks to land, over his right to do so, and necessarily also to pass upon the evidence presented to establish that right. *Lee Lung* v. *Patterson*, 168.
2. The ruling in *United States* v. *Lee Yen Tai*, 185 U. S. 213, affirmed. *Chin Bak Kan* v. *United States*, 193.
3. The legislation considered, the act of May 5, 1892, is satisfied by proceedings before a United States commissioner. *Ib.*
4. It was competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under the decision in *United States* v. *Wong Kim Ark*, 169 U. S. 649. *Ib.*
5. The same reasoning with respect to the authority to exclude applies to the authority to expel, and the policy of the legislation in respect to exclusion and expulsion is opposed to numerous appeals. *Ib.*

BANKRUPTCY.

See CONSTITUTIONAL LAW, 4, 5, 6.

CONSTITUTIONAL LAW.

1. It is within the power of Congress to prescribe that a package of any article which it subjects to a tax, and upon which it requires the affixing of a stamp, shall contain only the article which is subject to the tax. *Felsenheld* v. *United States*, 126.
2. The coupons described in the statement of facts are within the prohibitions of the act of July 24, 1897, 30 Stat. 151. *Ib.*
3. Neither question three nor question four presents a distinct point or proposition of law, and, as each invites the court to search the entire record, the court declines to answer them. *Ib.*
4. The bankruptcy law of 1898 is not unconstitutional because it provides that others than traders may be adjudged bankrupts; and that this may be done on voluntary petition. *Hanover National Bank* v. *Moyses*, 181.
5. Nor is it unconstitutional for want of uniformity because of its recognition of exemptions by the local law. *Ib.*
6. The notices provided for by the act are sufficient under the Constitution of the United States, and the discharge of the debtor under proceedings at his domicil authorized by Congress is valid throughout the United States. *Ib.*

See RAILROAD, 1 2, 3, 4, 5.

CONTRABAND OF WAR.

1. The Styria, an Austrian steamship sailing from Trieste *via* Sicilian ports to New York, took on board at Port Empedocle, Sicily, a quantity of sulphur for New York. Before sailing the master learned that war had broken out between Spain and the United States, and as sulphur was an article contraband of war, he had the sulphur all unloaded and warehoused at Port Empedocle before sailing. This court holds that the master of the Styria was justified in relanding and warehousing the contraband portion of the cargo, and that in so doing he had reasonable regard for the interests of both ship and cargo. *The Styria*, 1.
2. This court does not think that, in the subsequent circumstances, it was the master's duty to reship that cargo, and resume his voyage with the sulphur on board. *Ib.*

CONTRACT.

1. Any one sued upon a contract may set up, as a defence, that it is a violation of an act of Congress. *Bement* v. *National Harrow Company*, 70.
2. The city of Tallahassee has never been under obligation to take electric lighting from the Capital City Light and Fuel Company. *Capital City Light and Fuel Co.* v. *Tallahassee*, 401.
3. There has been no impairment of any contract between the city and the plaintiff in error or its predecessor, and the city has the right to avail itself of the privileges granted by the acts of 1897 and 1899, so far as regards the electric lighting of the city. *Ib.*

CORPORATION.

1. As between creditor and stockholder the provision of the constitution of Kansas that "dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder," applies to indebtedness incurred in the legitimate and contemplated business of the corporation. *Ward* v. *Joslin*, 142.
2. Where a judgment has been rendered in Kansas against a corporation of that State, by default, on contracts which the corporation had no power to make, a stockholder when sued by virtue of the constitution and laws of Kansas in that behalf, may insist, in defence, on the invalidity of the contracts. *Ib.*
3. On the facts found the judgment below is correct and is affirmed. *Ib.*
4. This suit was brought by petitioner, as trustee of a mortgage. *Held*, that when a corporation sells or incumbers its property, incurs debts or gives securities, it does business, and a statute regulating such transactions does not regulate the internal affairs of the corporation. *Williams* v. *Gaylord*, 157.
5. The plaintiff took its charter with notice that it was not given the exclusive right of supplying the city of Mobile with water, and it had not, at the time of the transactions referred to in the pleadings, obtained that which its charter before amendment purported to authorize it to obtain, to wit, an exclusive right to all the sources of supply in the county. *Bienville Water Supply Company* v. *Mobile*, 212.
6. The legislature had the right of revocation and amendment. *Ib.*

COURT-MARTIAL.

The trial of an officer of volunteers by a court-martial, all the members of which were officers of the Regular Army, is illegal, and the objection to it could be taken on *habeas corpus*. *McClaughry* v. *Deming*, 49.

CRIMINAL LAW.

1. In relation to the part of this charge, in which the court speaks of an irresistible impulse to commit the murder, counsel for the defendant says that he made no claim that the defendant was actuated by an irresistible impulse, and that there is nothing in the evidence to show that he was; that what he did claim was that the defendant was laboring under an insane delusion, and that this charge did not bring that subject before the jury. As there is no portion of the evidence returned in the bill of exceptions, this court is unable to judge whether there was any which would justify, or which did justify the court in submitting the question of irresistible impulse to the jury. If there had been evidence on that subject, the submission of the question was certainly as fair to the defendant as he could ask. The court decides nothing further than that. *Hotema* v. *United States*, 413.
2. Upon the other portion of the charge, as to the general liability of the defendant to the criminal law and to the obligation of the government to prove him guilty beyond a reasonable doubt upon taking into consideration all the evidence, and in regard to every essential element of the crime, the charge of the court was undoubtedly correct. *Ib.*
3. Taking the whole charge together the court properly laid down the law in regard to the responsibility of the defendant on account of his alleged mental condition. *Ib.*
4. The question whether, upon a consideration of the facts, the extreme penalty of the law should be carried out upon this defendant is not one over which this court has jurisdiction. *Ib.*

CUSTOMS DUTIES.

Section 19 of the customs administrative act of 1890, requiring that whenever imported merchandise is subject to an *ad valorem* duty, the duty shall be assessed upon the value of all cartons, cases, crates, boxes, sacks and coverings of any kind, has no application to glass bottles filled with *ad valorem* goods. Such bottles are not "coverings" in the ordinary sense of the word, and are specially provided for in the tariff acts. *United States* v. *Nichols*, 298.

EVIDENCE.

1. Voluntary statements, made by a defendant before and after a preliminary examination, are admissible in evidence when made to the magistrate who conducted the preliminary examination. *Hardy* v. *United States*, 224.
2. It is well settled that the findings of fact in a state court are conclusive on this court in a writ of error. *Jenkins* v. *Neff*, 230.

See TRUST COMPANIES, 3.

INDIAN RESERVATION OF PUBLIC LAND.

1. By an act of Congress of February 16, 1889, the President was authorized to allow Indians residing on reservations to cut and dispose of dead timber, standing or fallen, on such reservations, for the sole benefit of such Indians. Defendants made five different contracts with individual Indians for the cutting of an aggregate of 2,750,000 feet. As a matter of fact, they cut and removed 17,000,000 feet. *Held:* That as to such excess both the Indians and the defendants were trespassers. *Pine River Logging Co. v. United States*, 277.
2. The objection that the several defendants were not responsible for the acts of each other is one which should be taken at the trial, and if not so taken, cannot be made available upon writ of error from this court. *Ib.*
3. In designating the number of feet to be cut under certain contracts, the use of the words "about" or "more or less" will not justify the cutting of a quantity materially and designedly greater than the amount provided for in the contract. *Ib.*
4. The fact that the parties themselves disregarded the amount stipulated in the contract, and the further fact that the agent of the Indian Department, who personally directed what timber should be cut and supervised such cutting, assented to their construction of the contract, is no excuse for a material departure from the terms of a contract, which had been approved by the Commissioner of Indian Affairs, acting under the authority and regulations of the President. *Ib.*
5. With the contracts before them, the agents of the government had but one duty, and that was to see that they were honestly and faithfully carried out according to their spirit and letter. *Ib.*
6. Damages were properly assessed at the value of the logs as they were banked upon the streams and lakes near where they were cut. *Ib.*
7. Defendants being either wilful trespassers, or purchasers from such trespassers, were held not to be entitled to credit for the labor expended upon the timber, but were liable for its full value when seized, although if the trespass had been the result of inadvertence or mistake, and the wrong was not intentional, the stumpage value of the timber when first cut would be the proper measure of damages. *Ib.*
8. The defendants were held not to be entitled to credit for a percentage of the stipulated compensation paid to the Indian Department as trustee for the benefit of helpless Indians. *Ib.*
9. In civil cases the United States recover the same costs as if they were a private individual. *Ib.*
10. The reporter's fee for a transcript of the record used by the plaintiff in preparing its bill of exceptions on appeal should not be taxed as costs. *Ib.*

INFECTIOUS DISEASE.

The law of Louisiana under which the Board of Health exerted the authority complained of in this case, is found in section 8 of Act 192 of 1898. The Supreme Court of Louisiana, interpreting the statute held that it empowered the board to exclude healthy persons from a locality infested with a contagious or infectious disease, and that this power

was intended to apply as well to persons seeking to enter the infected place, whether they came from without or within the State. *Held:* That this empowered the board to exclude healthy persons from a locality infested with a contagious or infectious disease, and that the power was intended to apply as well to persons seeking to enter the infected place, whether they came from without or within the State. *Compagnie Francaise de Navigation à Vapeur* v. *Louisiana State Board of Health*, 380.

INSURANCE.

1. Where a marine policy is taken out upon a blank policy providing by many of its terms for insurance on property or goods on land, it becomes doubly important to keep, and apply with strictness, the rule that the written shall prevail over the printed portion of a policy, as in such case the written, even more clearly than usual, will evidence the real contract between the parties; and courts will not endeavor to limit what would otherwise be the meaning and effect of the written language by resorting to some printed provision in the policy, which, if applied, would change such meaning and render the written portion substantially useless and without application. If there be any inconsistency between the written provision of the policy and the printed portions thereof, the written language must prevail. *Hagan* v. *Scottish Insurance Co.*, 423.
2. By virtue of the language contained in the policy, "on account of whom it may concern," it is not necessary that the person who takes out such a policy should have at that time any specific individual in mind; but if he intended the policy should cover the interest of any person to whom he might sell the entire or any part of the interest insured, that would be enough. *Ib.*
3. This court differs from the conclusion arrived at by the Circuit Court of Appeals in its statement that there was nothing in the case to support a finding that Hagan intended to insure a subsequent vendee of the boat, or of an interest therein, because of the retention in the policy of the provision that it should be entirely void, unless otherwise provided by agreement, if any change, etc., should be made; and holds that the very purpose of stating that the insurance was on account of whom it may concern was to do away with the printed provisions in regard to the sole ownership and to the change of interest and that was an agreement "otherwise provided," than in the printed portion of the policy. *Ib.*

INTERSTATE COMMERCE COMMISSION.

1. This record requires the court to determine whether the court below rightly refused to enforce an order of the Interstate Commerce Commission by which it was found that an alleged terminal charge, made by the defendants in error, for the delivery of live stock to the stock yards in Chicago, was unjust and unreasonable, and hence a violation of the act to regulate commerce. *Interstate Commerce Commission* v. *Chicago, Burlington & Quincy Railroad Co.*, 320.

2. As the right of the defendant carriers to divide their rates was conceded by the Commission, and upheld, no contention on this subject arises. *Ib.*
3. The through rate existing prior to June 1, 1894, is presumed to have provided compensation for services in making delivery at the stock yards. *Ib.*
4. The proposed conclusion that the rates were unjust and unreasonable cannot be sustained. *Ib.*
5. The decree of the Circuit Court of Appeals was right and must be affirmed; but nothing therein is to be construed as preventing that body from commencing proceedings to correct unreasonableness in the rates as to territory to which the reduction did not apply. *Ib.*

JURISDICTION.

1. The agreement of parties to submit questions to a jury, the trial there, and a stipulation for returning the testimony for consideration is a waiver of objection to jurisdiction. *Beyer* v. *LeFevre*, 114.
2. When the trial court and the appellate court agree as to the facts established, this court accepts their conclusion. *Ib.*
3. Under the facts in this case the jury were not warranted in finding that the execution of the will was procured by fraud or undue influence. *Ib.*
4. It is the rule of the Federal courts that the will of a person found to be possessed of sound mind and memory, is not to be set aside on evidence tending to show only a possibility or suspicion of undue influence. *Ib.*

OF THIS COURT.

1. When by the judgment of the Circuit Court each party to a cause is defeated in some part of his contention, and both take the case to the Circuit Court of Appeals, which affirms the judgment in favor of one party, and reverses it and remands the cause at the suit of the same party, the judgments of that court taken together cannot be regarded as final so far as the jurisdiction of this court is concerned, and writs of error from this court to review each judgment must be dismissed. *Montana Mining Co.* v. *St. Louis Mining & Milling Co.*, 24.
2. A certificate under section 6 of the act of 1891, should contain a proper statement of the facts on which the question or proposition of law arises. *Emsheimer* v. *New Orleans*, 33.
3. The entire record should not be transmitted and a decision asked on the whole case. *Ib.*
4. The inquiry as to the jurisdiction of the Circuit Court of suits to recover the contents of choses in action, relates, so far as the assignors are concerned, to the time when the suit was brought. *Ib.*
5. If at that time the assignors could have brought suit in the Circuit Court, it is immaterial whether they could have done so when the assignment was made. *Ib.*
6. Cases in which the jurisdiction of the District or Circuit Courts of the United States is in issue, can only be brought directly to this court after final judgment on the whole case. *Bowker* v. *United States*, 135.

7. When a libel and cross-libel are filed in admiralty, they should be heard together, and if the cross-libel is dismissed for want of jurisdiction before the whole case is heard and determined, this court cannot take jurisdiction of the order of dismissal under section five of the judiciary act of March 3, 1891. *Ib.*

8. This was an appeal from a judgment of the Court of Claims, sustaining a plea to the jurisdiction of the court to hear a petition filed by appellants, under the Indian Depredation Act of 1891. The plea was sustained. *Nesbitt* v. *United States*, 153.

9. The act of Congress of July 20, 1892, 27 Stat. 252, has no application to proceedings in this court. *Gallaway* v. *Fort Worth Bank*, 177.

10. This case having been decided below on demurrer, and having been brought to this court on appeal, and it appearing that the appearance of one of the defendants below was improvidently entered, and certain charges having been made involving the conduct of counsel, the case was remanded, for reasons stated, to the Circuit Court for the Northern District of West Virginia, to be dealt with, 184 U. S. 162, notwithstanding that while it was pending here that State was divided into two districts, 31 Stat. 736, c. 105, and ordinarily the case would fall within the Southern District. On motion to change the decree to that effect, the court, in view of the terms of the act and the situation of the case, declined to modify it. *Hatfield* v. *King*, 178.

11. It having been found in the District Court that a person proceeded against in involuntary bankruptcy was "engaged chiefly in farming," and the petition having been dismissed accordingly, *held*, that no appeal lies to this court from that decree. *Denver First National Bank* v. *Klug*, 202.

12. There was no dispute as to the facts out of which this controversy arose. The right of the plaintiff to recover under his contract with the State is not for this court to determine, unless the record discloses that he has been deprived of some title, right, privilege, or immunity secured to him by the Constitution of the United States, which was specially set up or claimed in the state court. *Kennard* v. *Nebraska*, 304.

13. The decision by the Supreme Court of the State of Nebraska, that the Pawnee reservation lands in that State were public lands, within the meaning of the twelfth section of the enabling act, did not bring into question the validity of that section; and there is nothing on which to vest a right to review the judgment of the Supreme Court of Nebraska. *Ib.*

MORTGAGE.

This was a suit in equity, brought by the petitioner, in the United States Circuit Court for the Western District of Pennsylvania, commenced to foreclose a mortgage given January 1, 1891, by The Pennsylvania Plate Glass Company upon its property in the county of Westmoreland and State of Pennsylvania, to the Farmers' Loan and Trust Company, to secure the payment of $250,000 of bonds then to be issued by the mortgagor company. A decree was entered by direction of the Circuit Court, providing for the foreclosure and sale of the property and for

the application of the insurance moneys as prayed for. Upon appeal to the Circuit Court of Appeals the decree of the Circuit Court was reversed as to the insurance moneys, and the court below was directed to enter a decree that those moneys should be paid to the defendant, The Penn Plate Glass Company. The material facts in the case are stated in the opinion of the court. The only question involved arose from the provision made in the decree by the Circuit Court Judge, impressing what is termed an equitable lien upon the insurance moneys collected on the policies taken out by The Penn Company, sufficient to pay any balance which may remain unpaid on the bonds secured by the mortgage to complainant, after the application of the proceeds of the sale of the property mortgaged. The Circuit Court held that the complainant had such equitable lien, while the Circuit Court of Appeals was of the contrary opinion. *Held* that the judgment of the Circuit Court of Appeals was right. *Farmers' Loan & Trust Co.* v. *Penn Plate Glass Co.*, 434.

NATIONAL BANK.

1. In an action brought by the receiver of a national bank appointed by the Comptroller of the Currency upon a bond of indemnity given to hold the bank harmless against fraud of a specified officer, it was contended that the court erred in admitting in evidence a notice of the default of the officer, given to the surety company by the receiver within from ten to seventeen days after the discovery of the default, and in instructing the jury that the requirement in the bond that immediate notice should be given of a default was fulfilled by giving notice as soon as reasonably practicable and with promptness, or within a reasonable time. *Held*, that the trial court did not err in refusing to instruct, as a matter of law, that the notice was not given as soon as reasonably practicable, under the circumstances of the case, or without unnecessary delay, and in leaving the jury to determine the question whether the receiver had acted with reasonable promptness in giving the notice. *Fidelity & Deposit Company* v. *Courtney*, 342.
2. The court points out an error in excluding evidence, but further holds that as the very question which the jury would have been called upon to determine if the evidence had been received, was fully submitted to them and was necessarily negatived by their verdict, no foundation exists for holding that prejudicial error resulted from excluding the evidence. *Ib.*
3. If the court below in anywise erred, it was in giving instructions which were more favorable to the defendant than was justified by the principles of law applicable to the case. *Ib.*
4. To instruct the jury in broad terms that if they found that the directors were careless in the management of the bank generally, they should find for the defendant, could only have served to mislead. *Ib.*

PATENT FOR INVENTION.

1. The object of the patent laws is monopoly, and the rule is with few exceptions, that any conditions which are not in their very nature illegal

with regard to this kind of property, imposed by the patentee, and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts; and the fact that the conditions in the contracts keep up the monopoly, does not render them illegal. The prohibition was a reasonable prohibition for the defendant, who would thus be excluded from making such harrows as were made by others, who were engaged in manufacturing and selling other machines under other patents; but it would be unreasonable to so construe the provision, as to prevent the defendant from using any letters patent legally obtained by it and not infringing patents owned by others. *Bement* v. *National Harrow Company*, 70.

2. Upon the facts found, there was no error in the judgment of the Court of Appeals, and it is affirmed. *Ib.*

PRACTICE.

1. The action of a trial court, upon an application for a continuance, is purely a matter of discretion, and not subject to review by this court, unless it be clearly shown that such discretion has been abused; and in this case it could not be said that an abuse of discretion was clearly shown. *Hardy* v. *United States*, 224.
2. There is no impropriety in permitting the government to search the mind of a juror, to ascertain if his views on circumstantial evidence were such as to preclude him from finding a verdict of guilty, with the extremest penalty which the law allows. *Ib.*
3. Voluntary statements, made by a defendant before and after a preliminary examination, are admissible in evidence when made to the magistrate who conducted the preliminary examination. *Ib.*
4. Without deciding that the briefs of counsel may be resorted to for the purpose of determining whether a Federal question was raised in the state court, it is sufficient to say that a general claim made that a particular act of the legislature is violative of the state and Federal Constitution, is not sufficient to show that a Federal right was specially set up and claimed or the validity of a statute was drawn in question in the state court, when no such question was noticed in the opinion of the state court and the case was disposed of upon a ground wholly independent of a Federal question. *New York Central Railroad Co.* v. *New York*, 269.

PUBLIC LAND.

1. While the two statutes making the Union Pacific Railroad grants did not double the price of the even numbered sections within the place limits, yet that was done by the act of March 6, 1868, c. 20, 15 Stat. 39, and the even numbered sections within the place limits were from that time not open to selection as indemnity lands. *Clark* v. *Herington*, 206.
2. The act of Congress provides in terms that the sections of land should be subject to entry only under the homestead and preëmption laws, and the Land Department had no power to turn one of those sections over to a railroad company. *Ib.*
3. No title to indemnity lands is vested until an approved selection has

been made; up to which time Congress has full power to deal with lands in the indemnity limits as it sees fit. *Ib.*

4. This is not an action to recover the possession of land, or to quiet title thereto; but it is clearly a matter of ordinary judicial cognizance, not excluded therefrom. *Ib.*
5. The contention that plaintiff in error is an innocent purchaser for value was not set up as a defence in the state courts. *Ib.*
6. The statute of June 16, 1880, providing that where entries of public lands have been canceled, the Secretary of the Interior shall refund the purchase money to the entryman, his heirs or assigns, is limited to such entryman, his heirs or voluntary assigns, and does not apply to one who purchased the interest of the entryman upon an execution sale against him. *Hoffeld* v. *United States*, 273.
7. This was a bill, filed by the appellee to establish her title to land in the city of Washington, of which she claimed to have been defrauded. The main asserted badges of fraud were a gross inadequacy of consideration, and other matters stated in the opinion of the court. Both the trial and the appellate courts concurred in holding that the proof vindicated the defendants, and it is held by this court that the entire want of foundation for the charges of wrongdoing urged against the defendants, and upon which the long litigation proceeded, may be taken as conclusively established. *Warner* v. *Godfrey*, 365.
8. The complainant, having expressly declined to put an end to the litigation on the theory that the proof showed that she was entitled to an unconditional recovery of the property, she is not to be allowed to reform her pleadings, and change her attitude towards the defendants, in order to obtain that which she had elected not to seek, and had declined to accept. *Ib.*

See INDIAN RESERVATION.

QUARANTINE.

See INFECTIOUS DISEASE.

RAILROAD.

1. The act of the legislature of Minnesota, creating a railroad commission, is not unconstitutional in assuming to establish joint through rates or tariffs over the lines of independent connecting railroads, and apportioning and dividing the joint earnings. *Minneapolis and St. Louis Railroad Co.* v. *Minnesota*, 257.
2. Such a commission has a clear right to pass upon the reasonableness of contracts in which the public is interested, whether such contracts be made directly with the patrons of the road or for a joint action between railroads in the transportation of persons and property in which the public is indirectly concerned. *Ib.*
3. Without deciding whether or not connecting roads may be compelled to enter into contracts as between themselves, and establish joint rates, it is none the less true that where a joint tariff between two or more roads has been agreed upon, such tariff is as much within the control of the legislature as if it related to transportation over a single line. *Ib.*

4. The presumption is that the rates fixed by the Commission are reasonable, and the burden of proof is upon the railroad company to show the contrary. *Ib.*
5. A tariff fixed by the Commission for coal in carload lots is not proved to be unreasonable, by showing that if such tariff were applied to *all* freight the road would not pay its operating expenses, since it might well be that the existing rates upon other merchandise, which were not disturbed by the Commission, might be sufficient to earn a large profit to the company, though it might earn little or nothing upon coal in carload lots. *Ib.*

STATUTE.

1. The Court of Appeals made a complete disposition of the controversy in this case, and all that was left for the Supreme Court was the ministerial duty of entering a final injunction in the language of the preliminary order, with the proviso that it should operate until such time in the future as the defendant should voluntarily withdraw from business in the District of Columbia; and this was clearly a final decree. *Chesapeake & Potomac Telephone Co.* v. *Manning*, 239.
2. Courts always presume that a legislature in enacting statutes acts advisedly and with full knowledge of the situation, and they must accept its action as that of a body having full power to act, and only acting when it has acquired sufficient information to justify its action. *Ib.*
3. While a legislature may prescribe regulations for the management of business of a public nature, even though carried on by private corporations, with private capital, and for private benefit, the language of such regulations will not be broadened by implication. *Ib.*
4. The decree as directed by the Court of Appeals was erroneous, and cast a burden upon the defendant to which it was not subjected by the legislation of Congress. *Ib.*

SURETY.

1. A surety on a contractor's bond, conditioned for the performance of a contract to construct a dry dock, is released by subsequent changes in the work, made by the principals without his consent. *United States* v. *Freel*, 309.
2. The obligation of a surety does not extend beyond the terms of his undertaking, and when this undertaking is to secure the performance of an existing contract, if any change is made in the requirements of such contract in matters of substance without his consent, his liability is extinguished. *Ib.*
3. If the government's pleader had evidence of facts showing such knowledge and consent, he should have asked leave to amend the declaration by adding the averment necessary to state it. *Ib.*

TAXES.

This suit was brought in the Circuit Court of the United States for the Northern Division of Ohio, Eastern District, to restrain the collection of certain taxes levied by the officers of Cuyahoga County, Ohio, upon

the appellee bank. The grounds of the suit were that the acts of the taxing officers of said county were in violation of the "rights of the plaintiff (appellee) and of its shareholders accorded to them by section 5219 of the Revised Statutes of the United States, securing to said shareholders a restriction of the rate and limit of taxes assessed upon their said shares to that assessed upon other moneyed capital in the hands of individual citizens of the State of Ohio." The bill alleged that the plaintiff (appellee) was a national bank, and stated the capital stock of the bank and the number of shares into which it was divided; that its cashier made the proper returns of the resources and liabilities of the bank to the county auditor; that the latter fixed the value thereof, as required by section 2766 of the Revised Statutes of the State, after deducting the assessed value of the real estate of the bank, and transmitted a statement of his action, and a copy of the report made by the cashier, to the state board of equalization, for incorporated banks and that board, professing to act under sections 2808 and 2809 of the Revised Statutes of the State, increased the valuation of the shares without notice to the bank or to its shareholders, and that the board was hence without jurisdiction to make such increase, and "its action in respect thereto was void and of no effect." It was averred "that said state board of equalization knowingly and designedly did fix a much higher per centum of valuation and assessment for taxation upon the shares of the plaintiff's capital stock than was assessed upon other moneyed capital in the hands of individual citizens of the State of Ohio, and much higher than that fixed on other moneyed capital in the hands of such citizens in said county of Cuyahoga and said city of Cleveland." After the answer was filed, the case was referred to a master, and upon the coming in of his report, and, after considering the exceptions of the parties to it, the court dissolved the injunction which had been granted and dismissed the bill. That action was reversed by the Circuit Court of Appeals and the cause remanded, with instructions to enter a decree in favor of the complainant (appellee here). Thereupon an appeal was taken. *Held* that the judgment of the Court of Appeals should be reversed, and the judgment of the Circuit Court should be affirmed. *Lander* v. *Mercantile Bank*, 458.

TERRITORIAL LEGISLATION.

1. By an act passed in 1887, the territorial legislature of Arizona constituted a Board of Loan Commissioners for the purpose of refunding the territorial indebtedness. In 1890, Congress passed an act approving and confirming the territorial act of 1887, "subject to future territorial legislation." This act was a repetition of the territorial act with a few immaterial changes and an additional section. *Held:* that the territorial act of 1887 was repealed by the act of 1890, and that the Board of Loan Commissioners still continued in existence, notwithstanding that the territorial legislature in 1899 repealed that portion of the act of 1887 constituting such board. *Murphy* v. *Utter*, 95.
2. *Held*, also, that the act of 1890 which declared the territorial act of 1887 to be "subject to future territorial legislation," was intended to au-

thorize such new regulations concerning the funding act as future exigencies might seem to require; but that it did not authorize the legislature to repeal the Congressional act of 1890. *Ib.*

3. *Held*, however, that it recognized the right of the territorial legislature to enact such legislation as should be in furtherance and extension of the main object of the act of 1890, whereby the power of refunding territorial indebtedness might be extended to the indebtedness of counties, municipalities and school districts. *Ib.*
4. *Held*, also, that even if the act of 1890 did not operate as a repeal of the territorial act of 1887, it was still a separate and independent act which it was beyond the power of the territorial legislature to repeal, and that the office of Loan Commissioners continued by that act, was not terminated by the repealing act of 1889. *Ib.*
5. *Held*, also, that a petition for a mandamus was a "proceeding taken" within the meaning of section 2934 of the Revised Statutes of Arizona, providing that the repeal of a statute does not affect any action or proceeding theretofore taken. *Ib.*
6. The fact that the members of the Board of Loan Commissioners were changed between the time the petition for a mandamus was filed and the time when a peremptory writ was granted, did not abate the proceeding. The board must be treated as a continuing body without regard to its individual membership, and the individuals constituting the board at the time the peremptory writ is issued may be compelled to obey it. *Ib.*
7. As it was decided in *Utter* v. *Franklin*, 172 U. S. 416, that it was made the duty of the Loan Commissioners to fund the bonds in question, it was *held* that, if the defendant could be permitted to set up any new defences at all without the leave of this court, it could not set up objections to the validity of bonds, which existed and were known to the Loan Commissioners at the time the original answer was filed, and before the case of *Utter* v. *Franklin* was heard or decided by this court. *Ib.*

TRUST COMPANIES.

1. Section 55 of the Laws of New York of 1893, ch. 196, simply places trust companies on an equality with banks, whether corporate or individual, in respect to the matter of interest, and does not give to trust companies power to loan, discount or purchase paper. *Jenkins* v. *Neff*, 230.
2. It is well settled that the findings of fact in a state court are conclusive on this court in a writ of error. *Ib.*
3. In the record in this case there is no evidence of such a discrimination. *Ib.*